

From: [Lenz, Gary W \(Ward\) MVR](#)
To: [Baumgartner, Craig S COL MVR](#); [Hamilton, Dennis W MVR](#); [Cox, Michael D MVR](#); [Heinold, Thomas D MVR](#); [Hancks, Rian W MVR](#)
Cc: [Fournier, Mari K MVR](#); [Hayes, Michael D MVR](#); [Ross, James S MVP @ MVR](#); [Vollman, Brant J MVR](#)
Subject: RE: [EXTERNAL] DAPL Pipeline
Date: Wednesday, May 04, 2016 5:14:14 AM

Sir, I the reason that 15 of the sites could not be accessed is that the landowners denied access to the tribes. It had been 16 sites, but DAPL was able to get access to the additional 8th site. I do not believe DAPL is making any further overtures to the landowners, but I will confirm that. I followed up my call to DAPL with an email to Joey Mahmoud, to inform him that trees will need to be removed from the 7 PCN areas so that the Upper Sioux can complete their surveys. I had a follow up message from Sara Childers with the Upper Sioux Community yesterday letting me know that they had an area of concern in Lyon County, and that the pipeline would have an adverse effect and needed to be re-routed. Also that removing downed trees would have an adverse effect on one of the sites. I have requested site specific information from her so that we can make an effect determination on any of the sites for which she has concerns. Ms. Childers has a call scheduled with Col. Henderson on Monday to go over her survey results from South Dakota.

Also, there has been follow up from Mr. Dan Higginbottom, who has involved the Inspector General's office. Mr. Higginbottom has still not provided the site specific information that we have requested from him. I gave him a cut-off date of this Friday to provide site specific information, or his opportunity to provide input will end.

Ward

Ward Lenz
Chief, Regulatory Branch
Rock Island District
U.S. Army Corps of Engineers
1500 Rock Island Drive
Rock Island, IL 61201
Ph. 309-794-5370

-----Original Message-----

From: Baumgartner, Craig S COL MVR
Sent: Tuesday, May 03, 2016 6:30 PM
To: Lenz, Gary W (Ward) MVR <Ward.Lenz@usace.army.mil>; Hamilton, Dennis W MVR <Dennis.W.Hamilton@usace.army.mil>; Cox, Michael D MVR <Michael.D.Cox@usace.army.mil>; Heinold, Thomas D MVR <Thomas.D.Heinold@usace.army.mil>; Hancks, Rian W MVR <Rian.W.Hancks@usace.army.mil>
Cc: Fournier, Mari K MVR <Mari.K.Fournier@usace.army.mil>; Hayes, Michael D MVR <Michael.D.Hayes@usace.army.mil>; Ross, James S MVP @ MVR <James.S.Ross@usace.army.mil>; Vollman, Brant J MVR <Brant.J.Vollman@usace.army.mil>
Subject: Re: [EXTERNAL] DAPL Pipeline

Ward,

Thanks for the update-- Of the 23 sites originally requested by Upper Sioux, we (including DAPL) were not able to grant access to 15 sites to date (separate from the 8 you mention below). Did we confirm the reason? If it is a land owner issue, is DAPL working with land owners to grant access?

Additionally, please make sure we are deliberately documenting all interactions and correspondence with tribes. Bottomline: we must be prepared to demonstrate that we exercised our due diligence for Section 106.

Thanks.

COL B.

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message

From: Lenz, Gary W (Ward) MVR
Sent: Tuesday, May 3, 2016 4:31 PM
To: Baumgartner, Craig S COL MVR; Hamilton, Dennis W MVR; Cox, Michael D MVR; Heinold, Thomas D MVR; Hancks, Rian W MVR
Cc: Fournier, Mari K MVR; Hayes, Michael D MVR; Ross, James S MVP @ MVR; Vollman, Brant J MVR
Subject: RE: [EXTERNAL] DAPL Pipeline

Sir, yesterday the Service provided us a response to our request for consultation and has, for the most part, concurred with our effect determinations in our Biological Assessment (BA). They do have an issue with our action area, and are requiring a Biological Opinion for Omaha District. The next to last paragraph in their response summaries the Services position with regards to the overall BA--the Corps has improperly delineated the action area based on interdependent activities, and the Service is requiring Formal consultation for Dakota Skipper, which occurs in the uplands.

Status:

Section 7 Consultation with the USFWS:

Section 7 consultation has been completed for MVR and MVS. The Dakota skipper issue needs to be addressed by Omaha District. A response to the Service's letter will be coordinated with HQ, and possibly DOJ.

Tribal Consultation, Section 106:

I received an email from Sam Childers, Upper Sioux Community on Friday. She said that her crew was not able to adequately survey 7 out of the 8 sites that they visited last week, due to downed trees in the survey area, and they will need to schedule a time to go back and complete their surveys. I verified this with the DAPL representatives. The trees were taken down to meet the clearing dates for the Indiana and Northern Long-eared Bat. DAPL cannot mechanically remove the trees without our permit verification. This does create a problem for MVR on how to proceed with regards to completing 106 given this last issue with the Surveys. I have called DAPL and let them know that they need to remove the trees to allow an adequate survey on the seven sites.

I need to follow up on the IA Commission on Native American Affairs issue.

The Project Managers for all three Districts are getting together Wednesday to go over the contents of the EA and coverletter

Ward

Ward Lenz
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-----Original Message-----

From: Baumgartner, Craig S COL MVR
Sent: Tuesday, May 03, 2016 7:52 AM
To: Hamilton, Dennis W MVR <Dennis.W.Hamilton@usace.army.mil>; Cox, Michael D MVR <Michael.D.Cox@usace.army.mil>; Heinold, Thomas D MVR <Thomas.D.Heinold@usace.army.mil>; Lenz, Gary W (Ward) MVR <Ward.Lenz@usace.army.mil>; Hancks, Rian W MVR <Rian.W.Hancks@usace.army.mil>
Cc: Fournier, Mari K MVR <Mari.K.Fournier@usace.army.mil>
Subject: Re: [EXTERNAL] DAPL Pipeline

Ward,

I need an update on our permitting approach and timelines by COB Wed (tomorrow). I bumped into the NWO team (Reg Chief and COL Henderson) here in D.C. Sounds like FWS provided a concurrence this week and the B.O. will be released in the next week or so. They are also moving out on the EA.

Also, need an update on 106 consultations, Upper Sioux and any other tribes. I saw the letter that came in from IA Commission on Native American Affairs (ICNAA) mentioning that we have not consulted all necessary tribes - I need to better understand what is fact and what is not in this letter. I suspect some of this has to do with where we have determined jurisdiction and where we have not.

Upper Sioux PCN site access for tribal survey -- only 8 of 23. Way ahead?

Rian, Need a legal determination on when we have exercised our due diligence for 106 consultations. We need to understand the conditions that define when we have a dependable argument knowing that certain tribes are going to argue otherwise.

Thanks.

COL B.

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message

From: Baumgartner, Craig S COL MVR

Sent: Tuesday, April 26, 2016 10:31 AM

To: Hamilton, Dennis W MVR; Cox, Michael D MVR; Heinold, Thomas D MVR; Lenz, Gary W (Ward) MVR; Hancks, Rian W MVR

Cc: Fournier, Mari K MVR; Baumgartner, Craig S COL MVR

Subject: FW: [EXTERNAL] DAPL Pipeline

Team - FYI below. Also, Ward and I called BG (Ret.) Crear yesterday late afternoon.

We need to setup a meeting with DAPL, Joey Mahmoud, in the near-term. Ward has lead to coordinate. At this meeting, we need to set reasonable expectations while demonstrating some flexibility -- clearly articulate our approach for permitting the PCN sites (65 total; must be consistent with NWO and MVS), our anticipated schedule and the critical actions that drive/impact our schedule (risk). We owe DAPL some predictability to inform their decision-making.

Two areas that have my most attention:

- Upper Sioux access to the requested PCN sites (only 8 of 23 complete); this gets more complicated if cultural resources are found as part of their 8 site surveys.
- Timing/outcome of the USFWS Biological Opinion.

Thanks.

v/r,

COL Craig S. Baumgartner

Commander and District Engineer, Rock Island District

U.S. Army Corps of Engineers

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-----Original Message-----

From: Mitchell, Anthony P COL MVS

Sent: Monday, April 25, 2016 10:23 PM

To: BG Robert Crear <robertcrear@aol.com>

Cc: Baumgartner, Craig S COL MVR <Craig.S.Baumgartner@usace.army.mil>; Henderson, John W COL NWO <John.W.Henderson@usace.army.mil>

Subject: RE: [EXTERNAL] DAPL Pipeline

Sir,

BLUF: MVS needs two items to complete its actions in support of DAPL. First is the USFW Biological Opinion comments, these comments will allow us to complete our EA and clearly define our timeline. As of today we do not have comments nor a date as to when we can expect them. The nature and extent of comments will inform our timeline. Second is the receipt by MVS of the Non Federal Sponsor endorsement from McGee Creek and Coon Run for DAPL, which was discussed during the 22 March 2016 phone call with all parties. Other activities continue in EM and Regulatory while we are awaiting these items.

Reference the order of priorities outlined by Joey below, the following responses to the proposed schedule are provided:

- NWP 12 Priorities - PCN 1 to 20 by May 15th: One of these NWPs is tied to the 408 for the Illinois River. The rest are tied to the USFW Biological Opinion (BO) that have not yet been received by MVS. Once the BO is received we will be able to determine processing time for these dependent on the nature and extent of comments. Once DAPL submits to MVS its Non Federal sponsor endorsement from McGee Creek as outlined in our 22 March Conference call with DAPL, MVS and McGee Creek / Coon Run and the 408 is issued the NWP for crossing the Illinois River should take us 7 days to complete.

- PCNs 51, 52 to 72 ASAP after May 15th but no later than May 30th: These NWPs are tied to the USFW Biological Opinion (BO) comments that have not yet been received by MVS. Once received we will be able to determine processing time dependent on the nature and extent of comments.

- Section 408 permits: MVS will issue one (1) 408 permit for DAPL. For the areas such as Carlyle Lake, Kaskaskia River and Illinois River / Impacted Levees, MVS has completed its review and has no 408 concerns. We have provided our information to the impacted Drainage and Levee District; we have maintained communication with DAPL on a weekly basis.

- Lake Carlyle and Kaskaskia River -- no later than June 1st preferable May 15th plus real estate consent to easement: The Real Estate Flowage Easement language is drafted and is ready to be issued to DAPL. 408 Reviews are complete with the exception of the DAPL Flood Response Plan, which is ongoing and should be complete next week. However, MVS cannot issue the 408 until the EA is complete. The EA cannot be completed until the comments from the USFW BO are received. The time that it takes to complete is dependent on the nature and extent of USFW comments.

- Illinois River and Levee District 408 -- need by June 1st: Once MVS receives the Non Federal sponsor endorsement for DAPL from McGee Creek and Coon Run (Illinois River Levees) as outlined in our 22 March Conference call with DAPL, MVS and McGee Creek / Coon Run we will be able to issue the 408 in approximately 15 working days (routing thru legal review).

Don't hesitate to contact me if I can be of further assistance.

Hooah!

Anthony

COL Anthony P. Mitchell

Commander, St. Louis Engineer District

U.S. Army Corps of Engineers

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-----Original Message-----

From: BG Robert Crear [mailto:robertcrear@aol.com]

Sent: Wednesday, April 20, 2016 5:25 PM

To: Baumgartner, Craig S COL MVR <Craig.S.Baumgartner@usace.army.mil>; Henderson, John W COL NWO <John.W.Henderson@usace.army.mil>; Mitchell, Anthony P COL MVS

<Anthony.P.Mitchell@usace.army.mil>

Cc: robertcrear@aol.com

Subject: [EXTERNAL] DAPL Pipeline

Importance: High

Gentlemen,

You all (certainly your staffs) are in the final home stretch for issuance of the Section 404 permits and Section 408 Permissions for the DAPL Pipeline. Below is a note from Joey Mahmoud, Senior VP for Engineering for Energy Transfer Company, charged with the responsibility to complete this project. He has had the pleasure to visit with Col Henderson on several occasions since Omaha is the lead district and Col Mitchell at least once. He has not had the pleasure to meet with Col Baumgartner, but there is still time if needed. He is a great guy who is totally knowledgeable of all aspects of Corps Regs , NEPA, Section 106, Section 7, etc. He is also very pragmatic. As we approach the home stretch, he asked me to convey the order of priorities that would be most helpful to his company and minimize negative impacts to the farmers and contractors. I would very much like for your comments and or feedback on the proposed schedule below. Thank you in advance for your continued attention to the important project.

Hooah!

RC

Brigadier General Robert Crear

US Army Retired

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Hey BG Crear,

As we get to closure on the permits and with the last minute nature of all of the permitting, provided below is the order of priorities that we have been working on to reduce damage to us, the landowners and the contractors. If the USACE districts can issue the permits in this order, although we are going to suffer literally millions in damages if we do not have these by the 15th, at least it will not be the full amount. Just because NWP's are not listed does not mean we have no risk, but I think we have until June to get them with no damage and therefore I think we will have everything by then so I did not list all of them.

The current construction plan includes the contractors mobilizing on May 2 and then starting work on the 16th and progress along their spreads at various rates but between 6,200 ft/day to 8,600 ft/day depending upon the topography and drain tiles. The key to minimize damage to us as well as to reduce damage to the landowners is to complete the installation this year to avoid a second year of damage to the agriculture field and loss of crops for two seasons. There are a ton of other reasons, but if people really care for the affected landowners, then the single greatest impact is to ag lands and we can simply minimize and avoid by starting construction on time.

Omaha District:

NWP 12 Priorities - PCN 3, 12, 13 and 14 are critical by May 15th and then the rest as soon as possible but no later than the third week of May.

HDD releases - (1) Lake Oahe, (2) James River and then the (3) Missouri - these are critical long lead drills and we really need to start to compete the project on time. I am scheduling the drills to start June 10th so we need help to get the 408's done and then get the real estate documents done ASAP.

Flowage Easements along Missouri River - consent of easement - Need by June 10th

Lake Oahe 408 and real estate release. - Need by June 10th

Rock Island District:

NWP 12 Priorities - PCNs 55 to 64 in Iowa and then 2 to 45 in numerical order - need by May 15th

Mississippi River - need by May 15th to start HDD - longest HDD on the job and we need to start May 15th

St Louis District:

NWP 12 Priorities - PCN 1 to 20 by May 15th

PCNs 51, 52 to 72 ASAP after May 15th but no later than May 30th

Section 408 permits:

Lake Carlyle and Lake Kaskaskia – no later than June 1st preferable May 15th plus real estate consent to easement

Illinois River and levee District 408s – need by June 1st

Thanks for your help.

Joey Mahmoud

SVP – Engineering Projects

Energy Transfer

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